

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Roanoke Division

ROBERT J. COLLIER,

Plaintiff,

v.

LAND & SEA RESTAURANT COMPANY,
LLC d/b/a FRANKIE ROWLAND'S
STEAKHOUSE

Case No.: 7:13-cv-104

Defendant/Third Party Plaintiff,

v.

PERFORMANCE FOOD GROUP, INC.
d/b/a PERFORMANCE FOOD SERVICE –
VIRGINIA,

Third Party Defendant/Fourth Party Plaintiff,

v.

SAM RUST SEAFOOD, INC.

Fourth Party Defendant/Fifth Party Plaintiff,

v.

CAPE COD SHELLFISH & SEAFOOD COMPANY,

Fifth Party Defendant/Sixth Party Plaintiff,

v.

NORM BLOOM AND SON, LLC,

Sixth-Party Defendant.

MEMORANDUM OF FOURTH PARTY DEFENDANT/FIFTH PARTY PLAINTIFF
SAM RUST SEAFOOD, INC. IN SUPPORT OF MOTION TO STRIKE JURY DEMAND
IN SECOND AMENDED COMPLAINT OF DEFENDANT/THIRD PARTY PLAINTIFF
LAND & SEA RESTAURANT COMPANY, LLC

In its second amended complaint, Defendant/Third Party Plaintiff Land & Sea Restaurant Company, LLC prays for declaratory relief and requests trial by jury. The Court should strike that demand because Land & Sea has not prayed for any relief that would entitle it to a trial by jury. The entire prayer for relief of Land & Sea is below.

Based on the foregoing, Land & Sea further requests that this Court enter judgment against Sam Rust, declaring that it must defend and indemnify Land & Sea against Collier's claims in accordance with the Agreement.

Because Land & Sea seeks only a declaration of its rights, it has no right to trial by jury. *In re Lockheed Martin Corp.*, 503 F.3d 351, 358-359 (4th Cir. 2007)(citing extensive authority), cert. den. sub nom., *Nat'l Cas. Co. v. Lockheed Martin Corp.*, 553 U.S. 1017 (2008).

CONCLUSION

For the reasons stated above, this Court should deny Land & Sea's demand for trial by jury and grant Sam Rust all other relief to which Sam Rust may be entitled.

SAM RUST SEAFOOD, INC.

By: /s/ C. Jay Robbins, IV
Of Counsel

C. Jay Robbins, IV (VSB No. 22847)
MIDKIFF, MUNCIE & ROSS, P.C.
300 Arboretum Place, Suite 420
Richmond, Virginia 23236
T: 804-560-9600
F: 804-560-5997
crobbins@midkiffllaw.com
Counsel for Sam Rust Seafood, Inc.

CERTIFICATE

I hereby certify that on September 16, 2014, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

James R. Jebo, Esq.
VSB No. 48418
Dannel C. Duddy
VSB No. 72906
Michael E. Harman
VSB No. 16813
Lynne Jones Blain
VSB No. 23719
Attorneys for Performance Food Group, Inc.
Harman, Claytor, Corrigan & Wellman
P. O. Box 70280
Richmond, VA 70280
804-622-1107
804-747-6085 – facsimile
jjebo@hccw.com
dduddy@hccw.com
lblain@hccw.com
mharman@hccw.com

Kenneth J. Ries, Esq.
VSB No. 29909
Ronald M. Ayers, Esq.
VSB No. 01158
Justin E. Simmons, Esq.
VSB No. 77319
Attorneys for Defendant/Third Party
Plaintiff Land & Sea, Inc.
Johnson, Ayers & Matthews, PLC
P. O. Box 2200
Roanoke, VA 24009-2200
540-767-2000
540-767-1552 – facsimile
kries@jamlaw.net
rayers@jamlaw.net
jsimmons@jamlaw.net

John J. Morgan, Esq.
CT Bar No. ct407105jjm
Attorney for Robert J. Collier
Barr & Morgan
22 Fifth Street
Stamford, CT 06905
203-356-1595
203-357-8397 – facsimile
jmorgan@pmpalawyer.com
Pro Hac Vice

C. Richard Cranwell, Esquire
VSB No. 3347
Attorney for Robert J. Collier
Cranwell, Moore & Emick, P.L.C.
P. O. Box 11804
Roanoke, VA 24022-1804
540- 344-1000
540- 344-7073 - facsimile
crc@cranwellmoorelaw.com

C. Kailani Memmer
VSB No. 34673
Attorney for Norm Bloom and Son, LLC.
Guynn, Memmer & Dillon, P.C.
415 S. College Ave.
Salem, VA 24153
Phone: 540-387-2320
Fax: 540-389-2350
kai.memmer@gmdlawfirm.com

Phillip R. Lingafelt, Esq.
VSB No. 29229
Attorney for Robert J. Collier
Glenn, Feldmann, Darby & Goodlatte
P. O. Box 2887
Roanoke, VA 24001-2887
540-224-8000
540-224-8050 – facsimile
plingafelt@gfdg.com

Mark C. Nanavati, Esq.
VSB No. 29229
G. Christopher Jones, Jr., Esq.
VSB No. 82260
Attorney for Cape Cod Shellfish &
Seafood Company
Sinnott, Nuckols & Logan, P.C.
13811 Village Mill Drive
Midlothian, Virginia 23114
804- 893-3866
804-378-2610 - facsimile
mnanavati@snllaw.com
cjones@snllaw.com

T. J. O'Neill
CT Bar No. _____
Counsel for Norm Bloom and Son, LLC
Day Pitney LLP
One Canterbury Green
201 Broad Street
Stamford, CT 06901
203- 977-7557
203-399-5893 - facsimile
tjoneill@daypitney.com

I further certify that on September 16, 2014, courtesy copies of the foregoing were sent first-class mail, postage prepaid to the following:

Stuart G. Blackburn, Esq.
CT Bar No.102807
Counsel for Sam Rust Seafood
(in CT action)
Blackburn & O'Hara, LLC
Two Concord Way
P. O. Box 608
Windsor Locks, CT 06096
860-292-1116
860-292-1221 – facsimile
sgblackburn@sgblackburn.com

Robert C. E. Laney
CT Bar No. _____
Counsel for Cape Cod Shellfish &
Seafood Company (in CT action)
RYAN RYAN DELUCA LLP
707 Summer Street
Stamford, CT 06901
203-541-5010
203-357-7915 – facsimile
roblaney@ryandelucalaw.com

/s/ C. Jay Robbins, IV